

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211950.2**DATE:** February 10, 1984**MATTER OF:** DWS, Inc.**DIGEST:**

GAO will not review a protest against an agency's converting a contracted commercial activity to an in-house commercial activity without following the procedures set forth in Office of Management and Budget Circular A-76 because, except under limited circumstances not present here, we regard compliance with the circular as a matter of executive branch policy.

DWS, Inc. protests the alleged intent of the Department of the Air Force to convert a contracted commercial activity to an in-house commercial activity without complying with Office of Management and Budget Circular No. A-76. We dismiss the protest.

The Air Force issued invitation for bids No. F04699-83-B-0003 as part of a cost comparison under Office of Management and Budget Circular No. A-76 to determine whether it would be more economical to contract for consolidation and containerization services at McClellan Air Force Base than to continue to have the services performed with in-house personnel. Bestway Services, Inc. and DWS submitted the low and second-low bids, respectively in response to the solicitation. Based on the cost comparison, the Air Force awarded a contract to Bestway Services, Inc. in late 1983. In January 1984, the Air Force terminated Bestway's contract for default, and according to the protester's submission, the Air Force now intends to perform the function with in-house personnel.

DWS contends that the Air Force should not be permitted to return the activity to in-house performance until it has complied with the procedures set forth in A-76 for

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converting contracted commercial activities to in-house performance. The supplement to A-76 (August 1983) permits the conversion of a contracted commercial activity after a contractor's performance becomes unsatisfactory only if (1) recompetition with other sources fails to result in a reasonable price and (2) a cost comparison of the activity indicates that it would be more economical to perform the activity in-house. DWS points out that its second low bid was below the government's estimate for in-house performance, demonstrating that recompetition would yield a reasonable price and that it is more economical for the government to contract for the services than to perform them in-house.

We will not review this matter. The decision whether to perform work in-house or by contract under A-76 is a matter of executive branch policy which we do not generally review as part of our bid protest function. When an agency, however, utilizes the procurement system to aid its decision by setting forth in a solicitation the circumstances under which a contract will or will not be awarded, we will review an allegation that the agency did not comply with established ground rules for comparing the cost of contracting to the cost of in-house performance. We engage in this limited review on the basis that it would be detrimental to the procurement system if, after the agency induces the submission of offers, there is a faulty or misleading cost comparison that materially affects the decision. Serv-Air, Inc.; AVCO, 60 Comp. Gen. 44 (1980), 80-2 CPD 317.

In this case, the agency apparently conducted an accurate cost comparison and awarded a contract to the low bidder pursuant to the procedures set forth in A-76. Obviously, the matter of whether the agency adheres to the procedures and policies of A-76 after termination of that contract is beyond our limited scope of review.

The protester argues that we should expand our review to include the instant situation on the basis that the return of the services to in-house performance without following A-76 procedures would be detrimental to the procurement system. The protester does not, however, specify the adverse effect on the system such action might have,

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and any adverse effect of which we can conceive is too speculative and remote a possibility to justify our review of an executive branch policy matter. Consequently, we decline the protester's invitation to expand our review and we dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel